CF0000065306

APPEAL OF PRISONER

Cr A 188/02

(2)

High Court of Chhattisgarh
BILASPUR
14 FEB 2002
Reg. No. 52
Receipt Clerk
High Court Bilaspur

No. 661/2002 Name रामगोपाल

Father's name चहोरन

Residence सा०- बोडे मुरा पाना खड़गवा Age [illegible]

Sentenced S.T.N. 243/2001 On 31-1-2002

Under section 302 भा० दं० वि० by माननीय न्यायालय अपर सत्र न्यायाधीश

आजीवन कारावास पेन्ड्रा रोड जिला कोरिया

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 8-2-2002
2. Date of which copy received 8-2-2002
3. Date on which appeal sent
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 661/2002 Name रामगोपाल आ० चहोरन

Continued in केन्द्रीय Jail अंबिकापुर

No. 5205 Dated 11/02/02 199

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय एडिशनल (ज्यूडिशियल) रजिस्ट्रार उच्च न्यायालय छत्तीसगढ़ बिलासपुर

to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न:- निर्णय प्रतिलिपि 3(तीन पन्ने में)

Superintendent

Superintendent
Central Jail Ambikapur (Surguja)

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 199

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

//SURGUJA TY.//

* * *

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(17)

**मामला क्रमांक** ...G.A.-188/02... **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH** -:

**HON'BLE MR. L.C. BHADOO, Ag. C.J. &**
**HON'BLE MR. SUNIL KUMAR SINHA, J.**

**08.01.2007**

Shri Abhay Tiwari, counsel for the appellant.

Shri Ravindra Agrawal, Panel Lawyer for the State.

I.A. No.3800/2004 has been filed on behalf of the appellant to dispose of the appeal itself, to which, learned counsel for the State has no objection.

Therefore, with the consent of the parties, the appeal itself is being disposed of by this judgment.

**Per L.C. Bhadoo, Ag. C.J.**

This appeal is directed against the judgment of conviction and order of sentence dated 31.1.2002 passed by the Additional Sessions Judge, Mandendragarh, District – Koria (C.G.) in Sessions Trial No.243/2001, whereby, learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of offence under Section 302 of IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/, in default of payment of fine to further undergo R.I. for 3 months.

The prosecution case, in brief, is that on 6/5/2001, Jagannath, father of the deceased – Meera Bai gave Merg intimation (Ex.-P/2) in the Police Station – Khadganwa to the

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**मामला क्रमांक** ....Cr.A-188/02..... **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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effect that his daughter Meera Bai was married to Ram Gopal of village - Bodemuda. In the evening of 5/5/2001, he came to know that his daughter has expired. On receiving this information, he alongwith his wife reached village -Bodemuda at about 8:00 p.m. and saw that his daughter was already dead, but how she died, he does not know. On receiving this Merg intimation, SHO Police Station – Khadganwa, District - Koria left for the scene of occurrence, prepared inquest (Ex.-P/1) on the body of the deceased. The body of Meera Bai was sent for postmortem examination to the Primary Health Centre, Khadganwa, where Dr.O.L. Burman conducted the postmortem, prepared postmortem report (Ex.-P/3), in which, he opined that the cause of death was asphyxia due to throttling and the death was homicidal in nature. He prepared the site plan of the place of occurrence (Ex.-P/4). *Dehati nalisi* (Ex.P-5) was lodged by the Investigating Officer. Based on the postmortem report and enquiry under Section 174 Cr.P.C., the Investigating Officer reached to the conclusion that Meera Bai was murdered by throttling, therefore, the First Information Report (Ex.-P/5A) was registered for commission of the offence under Section 302 of IPC.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Manendragarh, who in turn committed the case to the Sessions Judge, Ambikapur, from where, the learned Additional Sessions Judge, Manendragarh received the case on transfer.

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**मामला क्रमांक** ..... Cr.A-188/02 ..... **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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The prosecution in order to establish the charge against the accused examined 5 witnesses. The statement of the accused was recorded under Section 313 of Cr.P.C., in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and how the deceased died, he does not know.

Learned Additional Sessions Judge after hearing respective counsel and perusal of the record convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant has not disputed the fact of homicidal death of Meera Bai. Apart from that, Dr. O.L. Burman (PW-4), who conducted the postmortem, has stated that on 6/5/2001 at about 3:00 p.m., Constable of Police Station – Khadganwa brought the dead body of Meera Bai, aged about 30 years. He conducted the postmortem on the body of the deceased and found that there was bleeding from nose and mouth, tongue was between the teeth. On opening her neck, it was found that 4th, 5th and 6th rings of cartilage were fractured, she died due to asphyxia; on account of throttling, the report is (Ex.-P/3). In view of this, it is established that death of Meera Bai was homicidal in nature.

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -4- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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As far as involvement of accused in crime in question is concerned, there is no direct or ocular evidence in this case. The whole case rests on the circumstantial evidence. The circumstances relied upon by the prosecution to connect the accused with the crime in question are as follows:

(i) That the homicidal death of Meera Bai has occurred in the house of accused.

(ii) That, the accused has not offered any explanation as to how Meera Bai died. On the contrary, he left the house, climbed on the mango tree and when the Police Officer came and asked him to come down, then only, he came down from the mango tree.

Learned counsel for the accused/appellant argued that there is no evidence in this case involving the accused in crime in question. Moreover, body of Meera Bai was found in the house of accused, where the parents of accused were also residing, therefore, no inference can be drawn that the accused was the author of the crime.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the respective parties, we have perused the record.

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**मामला क्रमांक** Cr. A. 188/02 **सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -5- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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PW-1 – Jagannath, father of the deceased, has stated that his daughter was married to the accused 7-8 years prior to the date of incident. On receiving information regarding death of his daughter, he alongwith his wife went to the house of accused and saw that Meera Bai was lying dead. He enquired about the accused, then the father of the accused informed that he had run away, on which he suspected the death of the daughter, therefore, he reported the matter in the Police Station – Khadganwa. Thereafter, the SHO Police Station and Doctor came on the spot and prepared inquest. During that period, it was informed that at about 50-60 paces, the accused was sitting on a mango tree, therefore, SHO asked him to come down and on asking by the SHO, he came down. On enquiry by the SHO, accused informed that he has committed murder of his wife by pressing her neck. Similar is the evidence of PW-2 – Janki Bai, wife of Jagannath and in cross-examination of these two witnesses, defence has not been able to bring on record anything. That, apart from the accused, his parents were also residing in the same house. Neither there is any other evidence that apart from the accused, any other person was involved in commission of the crime nor there is cross-examination to the effect that at the time of commission of the crime in question, the accused was not at his house. On the other hand, accused left the house, climbed the tree and came down from it only when the SHO asked him to come down. In the statement recorded under Section 313 Cr.P.C.,

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -6- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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accused has not explained the circumstance, under which, Meera Bai was throttled. The accused and deceased were residing together, therefore, it was within the special knowledge of the accused as to how Meera Bai received the fracture of cartilage, rather he has pleaded totally innocence.

The prosecution has already established that accused and the deceased were residing together and Meera Bai died on account of throttling due to asphyxia, therefore, in the circumstance, initial burden was discharged by the prosecution. As per provisions of Section 106 of the Indian Evidence Act, the burden shifted on the accused to explain the circumstance, under which, Meera Bai had died, but the accused has failed to discharge the burden rather he has pleaded total innocence. The accused in his statement has not offered any explanation as to why he left the house and climbed the tree.

We are fortified in our view by the judgment of Supreme Court rendered in the matter of ***State of Rajasthan vs. Kashi Ram*** reported in ***2006 AIR SCW 5768***, in which, it has been held that the respondent, accused having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. In the aforesaid case also, wife of the accused had

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -7- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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died on account of asphyxia and even after the arrest, accused did not offer any explanation as to when he parted company with his wife nor did he offer any exculpatory explanation to discharge the burden under Section 106 of the Evidence Act. Therefore, these abovesaid incriminating circumstances form a complete chain and are consistent with no other hypothesis except the guilt of the accused respondent.

In another judgment in the matter of ***Trimukh Maroti Kirkan vs. State of Maharashtra*** reported in ***2006 AIR SCW 5300***, the Apex Court held that if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -8- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. In case of no explanation or false explanation it would because an additional link in chain of circumstances.

In the present case also, the murder was committed in the house of the accused and he has not offered any explanation, whereas, as per the medical evidence, it is established that the death of Meera Bai was homicidal in nature, therefore, accused has failed to discharge his burden.

In the facts and circumstances, we are of the considered opinion that the judgment of the trial Court does not suffer from any illegality or infirmity.

Learned counsel for the appellant placing reliance on the judgment of the Apex Court in the matter of ***Uday Singh vs. State of U.P.*** reported in ***2002 CRI.L.J. 4655*** argued that the prosecution has not established that accused throttled his wife with an intention to cause death of the deceased. Moreover, the crime was committed in a sudden fight between the accused and deceased, therefore, the offence against the accused does not travel beyond Section 304-II of the IPC.

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -9- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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We fail to understand that how this judgment is applicable in the present case because in this case, the accused has not offered any explanation rather there is total denial. The defence of the accused is not there that he throttled his wife on account of a sudden fight, therefore, the arguments advanced by learned counsel for the appellant does not merit any consideration.

In the result, the appeal being devoid of merits is liable to be dismissed and is accordingly dismissed.

**Sd/-**
**Acting Chief Justice**

**Sd/-**
**Sunil Kumar Sinha**
**Judge**

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